
From: Marcus Nussbaum <marcus.nussbaum@gmail.com>
Sent: Tuesday, December 22, 2020 3:54 PM
To: Kane, John
Cc: Ilya Fishkin; admin@tnydl.com; Pees, Robert; Sharad, Saurabh; TAISA GURSHUMOVA; Fydrych, Victoria
Subject: Re: Pozniak v. Shwartsman USDC - EDNY Docket No.: 1:20-cv-02956-AMD-RML

John,

I am inserting my responses in red in between your questions in your email below of December 17, 2020.

If you want to discuss or have any more questions, I am available for a call any time tomorrow.

Marc

Regards,

Marcus A. Nussbaum, Esq.
Fishkin, Gurshumov & Nussbaum P.C.
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Brooklyn, New York 11235
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On Mon, Dec 21, 2020 at 7:24 PM Kane, John <jkane@akingump.com> wrote:

Marc,

On Friday, you said that you would answer our outstanding questions regarding Respondent's document production in response to Petitioner's Document Requests. We also raised a number of questions regarding Dr. Kishinevsky's treatment notes. Please respond to all our questions as soon as possible and, in any event, no later than 5 pm tomorrow.

Thank you,

John

From: Kane, John
Sent: Friday, December 18, 2020 2:01 PM
To: 'Marcus Nussbaum' <marcus.nussbaum@gmail.com>
Cc: Ilya Fishkin <ifishkin@fishkinfirm.com>; admin@tnydl.com; Pees, Robert <rpees@AkinGump.com>; Sharad, Saurabh <ssharad@akingump.com>; TAISA GURSHUMOVA <tglaw@yahoo.com>; Fydrych, Victoria <vfydrych@akingump.com>
Subject: RE: Pozniak v. Shwartsman USDC - EDNY Docket No.: 1:20-cv-02956-AMD-RML

Marc,

We look forward to your responses to our questions regarding Mr. Shwartsman's document production. In the meantime, we have a few questions and requests regarding Dr. Kishinevsky's treatment notes. First, the Federal Rules require that you provide the original documents that contain the facts and data Dr. Kishinevsky relied upon in forming her opinion. The document you sent us is not an original. Thus, we request that you provide Dr. Kishinevsky's original notes. Second, we have a number of questions regarding that document itself. Who created it? When was it created? Was it curated or edited in any way before it was produced to us? If so, by whom?

Thank you,

John

From: Marcus Nussbaum <marcus.nussbaum@gmail.com>
Sent: Friday, December 18, 2020 12:43 PM
To: Kane, John <jkane@akingump.com>
Cc: Ilya Fishkin <ifishkin@fishkinfirm.com>; admin@tnydl.com; Pees, Robert <rpees@AkinGump.com>; Sharad, Saurabh <ssharad@akingump.com>; TAISA GURSHUMOVA <tglaw@yahoo.com>; Fydrych, Victoria <vfydrych@akingump.com>

<vfydrych@akingump.com>

Subject: Re: Pozniak v. Shwartsman USDC - EDNY Docket No.: 1:20-cv-02956-AMD-RML

John,

Attached is a copy of the treatment notes which I just received from Dr. Kishinevsky.

If I receive anything else responsive to your email below, I will forward it to you, and I will respond to your three questions regarding the documents requests later this afternoon.

Marc

Regards,

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On Thu, Dec 17, 2020 at 3:00 PM Kane, John <jkane@akingump.com> wrote:

Marc,

As I stated during our call earlier today, Respondent has not addressed certain discovery-related issues that we have raised to you multiple times.

First, Dr. Kishinevsky's expert report is still missing the following information:

- The facts or data considered by Dr. Kishinevsky in forming her expert opinion, including all of her records regarding her care of S.P., including any notes in connection with her therapy sessions with him (Fed. R. Civ. P. 26(a)(2)(B)(ii));

All of the treatment notes and records which Dr. Kishinevsky provided to us have been forwarded to you. We have no further records.

- The witness's qualifications, including a list of all publications authored in the previous 10 years (Fed. R. Civ. P. 26(a)(2)(B)(iv));

Aside from her CV which was already provided, we have no further information. After conferring with Dr. Kishinevsky, she advised us that she has not authored any publications in the last 10 years.

- A list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition, including case citations and docket numbers (Fed. R. Civ. P. 26(a)(2)(B)(v)); and

After conferring with Dr. Kishinevsky, she advised us that the cases were heard in Brooklyn, however, she never inquired about the docket numbers and she "not sure" what court the matters were heard in.

- A statement of the compensation to be paid for the study and testimony in this case (Fed. R. Civ. P. 26(a)(2)(B)(vi)).

After conferring with Dr. Kishinevsky, she advised us that the Statement of Compensation which she provided is for this case.

Please provide the missing information and documents mentioned in each of the above bullet points, or, to the extent such information or documents do not exist, confirm as such.

Second, Respondent has not responded to the following questions and requests regarding Mr. Shwartsman's document production in response to Petitioner's Document Requests:

- Has Mr. Shwartsman completed his production in response to Petitioner's Document Requests?

I will speak with Mr. Shwartsman and confirm this before everyone breaks for Christmas, but at this juncture I believe that there is either no further production, or at best, a few pages of documents that need to be produced.

- Mr. Shwartsman's production contained six recordings. Are these complete recordings, or are they portions of recordings in Respondent's possession? If they are incomplete, please produce the complete recordings in their entirety.

I will speak with Mr. Shwartsman and confirm this before everyone breaks for Christmas. My understanding at the time that they were provided to me is that these were complete files which were unedited.

- Did Respondent ever have communications responsive to Document Requests 1 and 2? If he had them, why aren't they currently in his possession? If they were deleted, when were they deleted?

The communications responsive to Document Request "2" were the recordings which were already provided. There were never any documents responsive to Document Request "1".

Please respond to each of the questions mentioned in each of the above bullet points.

As I explained on the phone, if you do not respond to each of our inquiries above by the end of the day today (i.e. providing the missing documents and information or confirming those documents and information do not exist and responding to our questions), we will seek court intervention.

John

From: Marcus Nussbaum <marcus.nussbaum@gmail.com>
Sent: Thursday, December 17, 2020 12:41 AM
To: Kane, John <jkane@akingump.com>

Cc: Ilya Fishkin <ifishkin@fishkinfirm.com>; admin@tnydl.com; Pees, Robert <rpees@AkinGump.com>; Sharad, Saurabh <ssharad@akingump.com>; TAISA GURSHUMOVA <tglaw@yahoo.com>; Fydrych, Victoria <vfydrych@akingump.com>
Subject: Pozniak v. Shwartsman USDC - EDNY Docket No.: 1:20-cv-02956-AMD-RML

EXTERNAL Email

John,

I received the following additional information from Dr. Kishinevsky which she provided to me:

Shvartsbeyn vs. Moroz, she testified in 2016;
Shlimel vs. Semenova, she testified in 2015;
Umanskaya vs. Katznelson she was present to testify in 2019.

Per Dr. Kishinevsky, all cases were tried in Brooklyn.

She explains that she is still waiting for two more clients to respond, one is a divorce case, and the other is review for a prisoner on a death row for multiple murders.

Also attached is a fee schedule which she explains that she recently forwarded for a "federal case" and was paid for her work.

If I receive any additional information responsive to your requests I will provide it forthwith.

Regards,

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